

201311395

Thomas McCue

Officer McCue issued a summons to a civilian walking on a pedestrian walkway that separates the Dry Dock Playground and PS 34 between Szold Place and Avenue D (the walkway is an extension of 11th street but not open to vehicular traffic). Officer McCue gave the civilian – the only Black person among a group of civilians on the walkway – a ticket for being in a park after closing, although the walkway is not a part of any park. The civilian took out his phone to record the encounter, but Officer McCue told him he would be arrested if he did so. When asked his name, Officer McCue said it was on the summons.

During his CCRB interview, Officer McCue stated that the walkway was part of a park and was enclosed by a fence and a sign stating that the park closes at 10 pm. When the CCRB investigator confronted Officer McCue with photographs the investigator had taken showing that the walkway was not fenced, he stated the fence was on the other side. The investigator had taken a photograph of that side as well, which also showed the area was not fenced.

When shown a copy of the summons on which he had supposedly identified himself, Officer McCue admitted that it was illegible, and that there was no way to read either his name or any other identifying information on it. He acknowledged that his name was illegible on the summons, but testified that he had provided his name verbally.

The CCRB substantiated allegations that Officer McCue had failed to provide his name and shield number and had threatened to arrest the civilian. It also found that he had made a false statement in his CCRB interview, since his testimony about the placement of fences was contradicted by documentary evidence.

The NYPD resolved the case by providing Officer McCue with formalized training.

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Tanner made a statement to the officers that they were antagonizing people and should not wonder why people became belligerent. He further stated to the officers that he believed officers retaliate by “doing something” or “making something up about them” so they could be detained.

Three to four minutes into the conversation [REDACTED] watched as PO1 wrote him a summons. PO2 asked [REDACTED] if he wanted a supervisor. [REDACTED] said that he did. Before the supervisor arrived, [REDACTED] asked why the officers racially profiled him. The officers denied this. [REDACTED] asked why they did not stop anyone else then and they repeated that they were dealing with him. [REDACTED] asked both officers for their identifying information. He could not recall if he asked for their name, badge numbers, or both, stating that he knew they were both located in the same area so if he could see one, he could likely see the other. PO2 pointed to his badge and nameplate without hesitation. PO1 appeared more reserved and hesitated before pointing to his and also stating that it would be located on the summons. [REDACTED] afraid to make any sudden movements, leaned in towards both officers and read their name and badge numbers. He read both officers’ information aloud, hoping that would help him remember. By the time he made the complaint, he could only remember PO2’s badge number and the name of the supervisor who later responded.

PO1 handed the summons to [REDACTED] and said that if he did not respond to the summons, a warrant would be out for his arrest. Shortly after receiving the summons, a supervisor arrived in a car about twenty to thirty feet away, at the intersection of [REDACTED]. [REDACTED] showed him the summons and the supervisor supported his officers by stating that [REDACTED] was in a park after dusk. [REDACTED] received the supervisor’s name “Cpt. O’Sullivan.” [REDACTED] asked him why other passersby were not being stopped and he too stated that the officers could only deal with one person at a time. [REDACTED] started to walk away and asked PO1, “What’s your name again?” PO1 told [REDACTED] it was on the ticket. Cpt. O’Sullivan was still present and did not make any statements in regards to this. PO1 and PO2 continued to talk to Cpt. O’Sullivan in his car, but [REDACTED] could not hear the conversation. [REDACTED] continued walking away and noticed three men on Citibikes. [REDACTED] hoped that the officers would stop them since they were no longer dealing with [REDACTED] but they did not. The whole interaction lasted five to ten minutes.

[REDACTED] walked directly to PSA 4 with the intention of finding out why the incident occurred and to see if his ticket could be immediately voided. [REDACTED] stood at the front desk and presented the ticket while asking why the incident occurred. One “under cover” officer, PO3, described as a white or Hispanic man standing 6’2” to 6’3” tall, seemed to understand [REDACTED] and explained that the area was “not technically a park,” but because it was between a school and a park it was often associated as part of the park. PO3 stated that the area was a “gray area” and a “toss up.” He suggested that [REDACTED] go to the court located on the ticket.

[REDACTED] provided the CCRB with a copy of his summons, which stated in the box for “Defendant stated in my presence: ‘What are you going to make up next?’” The violation was “Park after dusk.” It was dated as December 4, 2013 and the time was 8:30 p.m. [REDACTED] name, address, date of birth and offense information was all clearly marked. There was no visible information provided in the tax registry, agency, command, or complainants name sections.

Interview Details

March 24, 2014
201311395
PO John Hewitt
8:45 a.m. to 9:04 a.m.

PO Hewitt, a white man with brown hair and brown eyes, stands 6' tall and weighs 235 pounds. He was 32 years old at the time of the incident.

PO Hewitt worked from 6 p.m. on December 4, 2013 until 2:35 a.m. the next day and was assigned to foot post 486 with PO Thomas McCue. They were dressed in uniform and assigned to vehicle # [REDACTED]

PO Hewitt was interviewed at the CCRB on March 24, 2014.

On December 4, 2013, at approximately 10:30 p.m., PO Hewitt and his partner, PO Thomas McCue, were on foot patrolling the area around [REDACTED] in Manhattan. PO Hewitt was informed that the complainant, [REDACTED] stated that the incident occurred around 9:45 p.m., the summons said 8:30 p.m. and his memo book said 10:30 p.m. PO Hewitt maintained that the incident occurred at 10:30 p.m. He described the area as a park with trees, basketball courts, seating area, and play equipment. There were multiple signs stating that the park closed at 10 p.m. or at dusk. Certain areas were divided into sections by fences, though PO Hewitt always believed that the entire area, including the walkway, was considered part of the park. PO Hewitt conducted stops and issued summonses to individuals in the past for being in the walkway after dusk.

PO Hewitt was shown an aerial-view photo obtained from Google Maps and he indicated that the incident occurred about mid-way through a walkway which cut between two groups of trees. He also indicated that there was a sign on a pole about halfway through the park stating that it closed at 10 p.m. PO Hewitt was presented with a photo of the sign taken during field work. He agreed that one would have to be about halfway through the walkway to see this sign, but he added that there were such signs at both ends of the walkway as well. When asked whether, from his professional experience, this sign was meant only for the fenced in areas or if it included the walkway, PO Hewitt briefly hesitated then answered, "well the area includes... looks like that way... we were stopping him [REDACTED] in the walkway. I've always been under the assumption that 10 p.m. is 10 p.m." When asked if he had ever been informed by a supervisor that the walkway constituted as part of the park, he stated that he had never been told it had not. His representative, Florence Friedman, asked about the relevancy of the questions and she was informed that [REDACTED] was summonsed and that the Parks and Recreation website as well as GovMaps indicated that the walkway was not considered part of the park.

PO Hewitt and PO McCue were walking in the walkway in the opposite direction as [REDACTED]. There was nothing suspicious about him or anything else that led the officers to stop him other than being in the area after dusk. PO McCue and PO Hewitt did not have any discussion about stopping [REDACTED] prior to doing so. PO Hewitt could not recall who made the decision to approach [REDACTED]. PO Hewitt and PO McCue had worked together in this area often and they routinely used the same tactic when approaching people in a park after dusk. When asked how many other people were in the area at this time, PO Hewitt hesitated and stated that he could not recall "the exact number" and only remembered the officers, [REDACTED] and later, Cpt. O'Sullivan. When asked if other people passed through the walkway while [REDACTED] was being summonsed, PO Hewitt paused for ten seconds then responded, "I don't know... passing through... ya know, there was... ya know... because you walk... I don't recall." When asked if there was anyone else in the general area he stated, "I don't 100% recall... stop was for a while... housing projects are right there." When asked if [REDACTED] was the only black individual in the general area, PO Hewitt responded, "He was.... I don't recall who else was there."

PO Hewitt and PO McCue asked [REDACTED] to stop and requested his identification, stating that the park closed at 10 p.m. At first, [REDACTED] was not willing to provide his information, but he eventually did. [REDACTED] was agitated and upset, as indicated by the volume of his voice. [REDACTED] asked why he was stopped and the officers repeated that the park closed at 10 p.m. while pointing to the sign. In his independent recollection statement, PO Hewitt stated, "He [REDACTED] proceeded to ask for shield information, so basically gave it to him." When asked for details, PO Hewitt clarified that [REDACTED] asked for the officers' name and shield numbers and PO Hewitt provided his information. He also stepped under a light post to make it clear to [REDACTED]. PO Hewitt could not recall what PO McCue did. PO Hewitt could not recall how many times [REDACTED] asked for this information and it could have been more than once. PO Hewitt could not recall hearing PO McCue state that his information

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would be on the summons. PO Hewitt was slightly in front of PO McCue as he wrote the summons, so he could not clearly see him. PO Hewitt was presented with the summons that apparently had no identifying information on it. PO McCue did not make any statements to PO Hewitt about omitting this information.

██████████ wanted to speak with a supervisor and Cpt. O'Sullivan arrived about halfway through the incident. PO Hewitt could not recall if Cpt. O'Sullivan arrived before or after PO McCue wrote the summons. Florence Friedman asked PO Hewitt if he explained the situation to the captain and PO Hewitt said yes. She then asked if Cpt. O'Sullivan stated whether ██████████ should not have been issued a summons and PO Hewitt stated no. With Cpt. O'Sullivan present, ██████████ continued to be agitated and upset. He asked for Cpt. O'Sullivan's name and he provided it.

When asked if ██████████ ever tried to remove his cell phone from his pocket, PO Hewitt paused for eight seconds and stated, "I mean, he took stuff out of his pockets." He could not recall if PO McCue made any statements about ██████████ cell phone. When asked if ██████████ did anything that could have led to his arrest, PO Hewitt stated, "I mean... his voice level was high where you can... ya know." PO Hewitt could not recall if PO McCue told ██████████ that he would be handcuffed and thrown in jail or if PO McCue made any reference to arresting ██████████.

The entire incident lasted approximately 20 to 30 minutes when ██████████ walked away with his summons. PO McCue and PO Hewitt continued to patrol the general area and they ultimately summonsed one other person that night for the same offence, though in a different part of the park. Neither PO McCue nor PO Hewitt summonsed anyone else for being in the walkway that night.

Interview Details

April 8, 2014
201311395
PO Thomas McCue
8:36 a.m. to 8:55 a.m.

PO McCue, a white man with brown hair and blue eyes, stands 5'10" tall and weighs 250 pounds. He was 29 years old at the time of the incident.

PO McCue worked from 6 p.m. to 2:35 a.m. and was assigned to foot post 486 with PO John Hewitt. He was dressed in uniform.

PO McCue was interviewed at the CCRB on April 8, 2014.

PO McCue was asked to clarify the time of the incident as the complainant, [REDACTED] stated it occurred at 9:45 p.m., the officer's memo book stated 10:30 p.m., and the summons noted 8:30 p.m. PO McCue stated that the incident occurred at 10:30 p.m. and that the notation in the summons was "grammatical error." As PO McCue read from his memo book, it was revealed that the captain, Cpt. O'Sullivan, responded to the scene after he was called for and signed PO McCue's memo book at 10:28 p.m. PO McCue then stated that he could not provide an exact time, but that it was likely around 10:25 p.m.

On December 4, 2013, at approximately 10:25 p.m., PO McCue and his partner, PO John Hewitt, observed [REDACTED] walking in the vicinity of [REDACTED] in Manhattan. PO McCue was asked to distinguish which areas were constituted as part of the park and he stated that the park was past any signs, which were posted on fences and on gates at the entrance and exit. The fences separated the park from the street. The following statements followed:

Inv. Milardo: "[REDACTED] was on which side of the fences?"

PO McCue: "He was beyond the posted signs."

Inv. Milardo: "Were these posted signs attached to fences?"

PO McCue: "Yes."

Inv. Milardo: "So [REDACTED] was in a fenced in area?"

PO McCue: "Yes ma'am."

PO McCue was then presented with images printed from Google Maps. The first image was of an aerial view of Dry Dock Park and he was asked to point out where the incident occurred. PO McCue's representative, Janet Insardi, informed PO McCue "for the record" that it was okay if he could not point out where [REDACTED] was summonsed because PO McCue was "not used to flying in the area." PO McCue was asked how long he worked in the vicinity and he stated one year, but was unable to point out where the incident occurred. He was then presented with ground view photos. A fenced in court was on the right side of the photo and a second fenced area was on the left side. In the middle was a separation that did not have any fences or gates. When asked to point out, from this view, where PO McCue issued the summons, he stated that this photo didn't show a fence on the other side of the entrance. He acknowledged that this side was opened, but the other was not. PO McCue was presented with another photo, of the other side, that showed two yellow poles, but no fence, gate, or chain blocking off the entrance. PO McCue did not know if a chain or fence was put up at that entrance at any point in the day to indicate that the entrance was blocked.

Rep. Insardi noted at this point that if an area is posted, but not chained, one could not enter. She and PO McCue were then shown two photos, one of a distant view of a pole in the mid-way through the walkway and the second of the close up of the pole with a sign stating that the park closed at 10 p.m. PO McCue was asked to point out which areas this sign referred to and he stated that walkway. PO McCue acknowledged that one had to be mid-way through the walkway in order to see this sign, but added that there were similar signs posted by the fences at the entrance and exit. Images printed from Gov Maps and from the Dry Dock Park page of the Parks and Recreation website were presented along with the Google Maps aerial image, all indicating that the walkway was an extension of 11th Street and not symbolized as part of the park. Rep. Insardi interrupted, stating that there were disclaimers attached to Gov Maps, the Park and Recreation website, and Google Maps so the accuracy of this documentation. She then stated, "From a legal perspective, if the street is not opened it's not considered a street. You cannot say that that's a street unless it's open to traffic."

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PO McCue conducted stops and issued summons in this area before. He was never told that the walk way was never part of the park. He had been formally told by Sgt. O'Sullivan, on a past occurrence, that this area constituted the park. There is no controversy in PO McCue's command regarding what this area was constituted as.

PO McCue and PO Hewitt immediately approached [REDACTED] with the intention of summoning him for being in a park after dusk and when the park was closed. PO Hewitt and PO McCue did not discuss approaching [REDACTED] prior to doing so. [REDACTED] was the only civilian present and there was no one else in the general vicinity. PO Hewitt asked [REDACTED] for his identification and [REDACTED] immediately became loud and irate. [REDACTED] immediately shouted at the officers that they had no right to stop him and demanded to speak with a supervisor. PO McCue called for a supervisor and Cpt. O'Sullivan arrived shortly thereafter. PO McCue denied starting to write the summons prior to the captain's arrival. PO Hewitt and [REDACTED] spoke with Cpt. O'Sullivan as PO McCue ran [REDACTED] identification. He heard some of their conversation, but was focused on what he was doing. He heard [REDACTED] state that he was upset and that the officers' did not have any right to stop him. PO McCue did not know how Cpt. O'Sullivan responded. PO McCue could not recall if Cpt. O'Sullivan ever told him not to issue [REDACTED] a summons or if he had any discussion with Cpt. O'Sullivan at all about the summons.

PO McCue was asked twice if, other than being in the park after dusk, [REDACTED] did anything that in PO McCue's professional discretion could have lead to [REDACTED] arrest. Both times he answered that [REDACTED] was in a park after dusk. The third time it was emphasized that the question regarded anything other than this offence and PO McCue said no. [REDACTED] tried to remove something from his pocket, though PO McCue did not know what it was. PO McCue told [REDACTED] to keep his hands out of his pockets and this further upset [REDACTED]. PO McCue could not recall if he made any other statements to [REDACTED] about him putting his hands in his pockets. He could not recall there being any discussion about arresting [REDACTED]. PO McCue could not recall if he ever threatened to arrest, lock up, or throw [REDACTED] in jail. PO McCue could not recall if [REDACTED] ever accused him of racial profiling. He could not recall if race was ever an issue or a point of conversation.

[REDACTED] requested the officers' name and shield numbers both before and after the captain arrived. [REDACTED] repeatedly shouted this question and PO McCue verbally provided his last name and shield number after the first response. PO McCue was asked: "What about the multiple times after that?" and PO McCue stated, "I was writing his information." When asked if he personally asked PO McCue again, he stated that [REDACTED] screamed this as a general statement. PO McCue could not recall if he ever told [REDACTED] that his information would be on the summons.

PO McCue was presented with a colored, scanned copy of the summons issued by him to [REDACTED] who presented it to the CCRB, at 15:19 in the recording. Rep. Insardi immediately pulled the document closer to her stating that it was "very light" and that she "could not really read it." PO McCue was asked if he could read any of the identifying information at the bottom of the summons and before he could answer, Rep. Insardi stated, "For the record, it's not a good copy." The following conversation then occurred:

Inv. Milardo: "Well, okay. Then read what is clear on the bottom." *Pointed to the bottom half of the summons.*

PO McCue: *from the section noted: Defendant stated in my presence.* "What are you going to make up next?"

Inv. Milardo: "Can you read what is in complainant's full name?"

PO McCue: "I cannot make it out, no."

Inv. Milardo: "What about the tax registry?"

PO McCue: "No, ma'am."

Inv. Milardo: "The agency?"

PO McCue: "No, ma'am."

Inv. Milardo: "Command code?"

PO McCue: "No."

Inv. Milardo: "What about 'Person described above summonsed to appear NYC court located at.'"

PO McCue: "No, ma'am. Can't read that either."

Inv. Milardo: "Right here? Where it says '346 Broadway.' Does it say 346 Broadway there?"

PO McCue: "I can't make it out."

Rep. Insardi: "Looks like it..."

Inv. Milardo: "What about the part right beneath it?"

Rep. Insardi: "Day of appearance. February 25, 2014."

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Inv. Milardo: "Yes. Did you leave out your identifying information on this summons?"

PO McCue: "No."

Inv. Milardo: "Do you have a copy where it is completed?"

PO McCue: "No."

Rep. Insardi: "Did you intentionally leave it off?"

PO McCue: "No."

Inv. Milardo: "From viewing this copy, the bottom is legible and clear except for the identifying information, which is not legible and clear."

PO McCue: "No, ma'am."

Rep. Insardi: "But you provided it verbally."

PO McCue: "Yes."

The entire interaction lasted approximately six minutes. PO McCue could not recall if anyone else passed through the walkway during that time. PO McCue summonsed one other person for the same offence, but this occurred in the child's playground. PO McCue did not summons anyone else that night for being in the same area as [REDACTED] was and he could not recall if he saw anyone else pass through that area for the rest of the night. PO McCue has not seen [REDACTED] since the incident and he never had court in reference to this summons. He did not know what happened to the summons.